

ST 03-0021-PLR 08/27/2003 SERVICE OCCUPATION TAX

This letter discusses roof truss systems. The test for special order items that result in Service Occupation Tax liability is set forth in subsection (b) of the Department's regulation at 86 Ill. Adm. Code 130.2115. (This is a PLR.)

August 27, 2003

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see [www.revenue.state.il.us](http://www.revenue.state.il.us)), is in response to your letters of August 27, 2002 and January 2003. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

As an Addendum to our Private letter Ruling Request for AAA (the 'Company') dated August 29, 2002, we are providing the following additional information and documentation that you requested in our recent conversation:

- Applicable periods for this Private Ruling Request are 'all open periods';
- The Company does not plan to incur Use Tax on the material cost of the components it fabricates and sells. This was erroneously stated in our original Private Letter Ruling Request; and
- We have attached Form IL-284 Power of Attorney.

Additionally, we have also attached a copy of our original Private Letter Ruling Request dated August 29, 2002. We hope this additional information is sufficient in resolving the outstanding issues related to the original Private Letter Ruling Request for AAA. Should you have any questions or need additional information, please do not hesitate to call me.

As we discussed in our earlier letter to you (ST-02-0267-GIL), the issue of whether AAA incurs a Retailers' Occupation Tax or Service Occupation Tax liability depends upon the nature of the items being produced and the nature of the design work involved. If the item is an item substantially similar to stock or standard items, even though custom-made, the sale of that item would result in Retailers'

Occupation Tax liability. The test for special order items that result in Service Occupation Tax liability is set forth in subsection (b) of the Department's regulation at 86 Ill. Adm. Code 130.2115 which states that sellers of machinery, tools, dies, jigs, patterns, gauges and the like are subject to the Service Occupation Tax rather than the Retailers' Occupation Tax if the following conditions are met:

1. the purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;
2. the property has use or value only for the specific purpose for which it is produced, and
3. the property has use or value only to the purchaser.

The information you have provided indicates that AAA makes a substantial contribution to the design and production of the components. AAA employees and subcontractors prepare the engineering drawing from which the components are manufactured and must assume responsibility for the structural integrity of the components. Draftsmen employed by AAA use the architectural drawing to prepare engineering drawings that show the exact materials, dimensions and method of fabrication to be used in fabricating the components. AAA employs an outside engineering service to affix a required professional engineer's seal to the engineering drawing. Once the engineering drawing is approved, it is used in AAA's facility to guide the craftsmen who fabricate the components. The components include the roof trusses, wall panels, floor decking structures and stair structures.

You have also indicated that a typical development of new homes has several models from which purchasers may choose. However, each model is available in several elevations and as a result the houses differ. One feature that distinguishes one elevation of a particular model from another is the roof dimension. The individual trusses which comprise the roof truss system may be duplicated many times, but it would be unusual for AAA to fabricate more than fifty identical roof truss systems regardless of the number of new homes in a development. This would also be true of the other components. As a result, the property is specifically adapted for use in a particular home. The components that AAA makes for one builder cannot be used for another. As a result AAA cannot and does not create stock or standard building components.

Based upon the information provided, it is our opinion that AAA is subject to Service Occupation Tax, not Retailers' Occupation Tax in regard to its engineering and fabricating of roof truss systems and wall panels. Please note that sales of individual roof trusses or wall panels in an amount of 50 or more as set forth in the Department's regulation at 86 Ill. Adm. Code 130.2115(a)(4) will result in Retailers' Occupation Tax liability on those sales rather than Service Occupation Tax liability. Section 130.2115 provides that a single repeat order or simultaneous orders from a user (so-called multiple orders) for 50 or more of the same item which would otherwise qualify for exemption from Retailers' Occupation Tax will be deemed to be volume production and will be subject to Retailers' Occupation Tax on the total amount received by the seller from any such volume production multiple order or orders. The Department declines to make a ruling regarding floor decking structures or stair structures without further information being provided.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions concerning this Private Letter Ruling, you may contact me at (217) 782-2844. If you have further questions related to the Illinois sales tax laws, please visit our website at [www.revenue.state.il.us](http://www.revenue.state.il.us) or contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Martha P. Mote  
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